IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.897 OF 2006

Vikas Nagnath Kadam ...Appellant
Vs.
Bhavanji Sidram Patil & Anr. ...Respondents

Mr. Nitin Jamdar for the Appellant
Mr.Niranjan Shimpi i/b Mr.P.K.Dhakephalkar for Respondent No.1.

CORAM: A.S.OKA, J.
DATED: APRIL 21,2006.

P.C.:

1. On the last date Appeal was heard finally at admission stage. Today it is kept for dictation of the Judgment.

2. The challenge in this Appeal is to the Judgment and Award dated 17th March 1998 passed by the learned Member of the Motor Accident Claims Tribunal by which compensation of Rs.50,000/- was awarded in favour of the Respondent No.1.

3. With a view to appreciate the submissions made by the parties, it will be necessary to refer to the facts of the case in brief.

4. The Respondent No.1 was proceeding from Mhadha to Devi temple road. A motor cycle owned by the Respondent No.2 and driven by the Appellant came in excessive speed and knocked down the Respondent No.1. As a result of the accident the Respondent No.1 suffered several injuries. He was admitted to Wadia Hospital at Solapur as an indoor patient from 6th May 1990 to 25th May 1990. Later on he was admitted to Sancheti Orthopaedics Hospital, Pune from 11th October 1990

to 13th November 1990. Subsequently he was admitted in another hospital at Pune for a period from 1st July 1993 to 20th July 1993.

5. Shri Jamdar for the Appellant submitted that there was absolutely no evidence of negligence on the part of the Appellant. He submitted that, in any event, compensation which is awarded is exorbitant and there is no evidence on record to come to the conclusion that the Respondent No.1 was entitled to receive compensation of Rs.50,000/-. He submitted that the interest awarded is excessive. The learned Advocate for the Respondent No.1 has supported the impugned Judgement and Award.

6. I have considered the submissions. The Respondent No.1 was a pedestrian. The finding of the tribunal is that the Appellant came on his motor cycle in a very high speed and dashed against the Respondent No.1 and as a result, the Respondent No.1 was knocked down. The learned Member of the Tribunal has recorded a finding that a case was tried to be made out by the Appellant that at the time of the accident the Respondent No.1 was under the influence of the liquor. The Appellant could not prove the said allegation. A finding is recorded that an offence was registered against the Appellant and the Appellant was prosecuted. It is not possible to find fault with the finding recorded by the Tribunal on the issue of negligence.

7. In so far as the injuries are concerned, there is a disability certificate at Exh.78 which discloses that the Respondent No.1 has suffered 50% permanent disability. The record of the Wadia Hospital, Solapur and Tarachand Hospital at Pune disclose that the Respondent No.1 underwent two surgeries on 25th May 1990 and 13th July 1990. Number of bills are placed on record showing purchase of medicines for the period from 9th May 1990 to 17th April 1995. Apart from that hospital bills are also produced. The injury certificate which is on record shows that the Respondent No.1 suffered fracture at tibia at middle third level. The learned Member found that the total amount spent which can be seen from the bills and receipts produced by the Respondent No.1 is Rs.23,675/-.

8. The Respondent No.1 was under treatment for considerably long time of about five years. In the meanwhile, he underwent two surgeries. In a case like this, it is impossible to expect an injured person to meticulously keep all the bills of the amounts spent on treatment and medicines. Apart from the expenses incurred on medicines and hospital charges, a large amount must have been spent on conveyance expenses by the Respondent No.1 and his family members. Considering all these aspects, a reasonable amount of compensation has been fixed by the Tribunal at Rs.50,000/-. In a matter of computing compensation payable

on account of an accident, there is always an element of guess work. Considering the evidence on record, the compensation amount fixed at Rs.50,000/- appears to be just and reasonable.

9. This takes me to other submission made by the Advocate for the Appellant as regards rate of interest. The Tribunal has awarded interest at the rate of 12% p.m. from the date of filing the Claim Petition till the date of payment. The Apex Court in a recent decision in the case of Abati Bezbaruh vs. Deputy Director General, Geological Survey of India and another reported in (2003) 3 S.C.C. page 148 held that considering the falling rates of interest, instead of interest at the rate of 12% p.m. interest at the rate of 9% p.a. deserves to be granted in a case where the accident has taken place in the year 1990. In the present case also the accident occurred in the year 1990. Same is the view taken by the Apex Court in other decision reported in 2001 A.C.J. (S.C.)page 428. In my view, the rate of interest ought to have been 9% p.a. instead of 12% p.a.

10. Hence I pass the following order :

i) The Appeal is partly allowed. The impugned Judgment and Award is modified by directing that the interest at the rate of 9% p.a. will be payable instead of 12% p.a.

ii) Rest of the Award is maintained as it is.

iii) No order as to costs in this Appeal.

Judge.